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April 28, 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: FCC Docket 01-309 - Section 68.4(a) of the Commission's Rules governing
Hearing Aid-Compatible Telephones

Dear Ms. Dortch:

Hand Held Products, Inc., by its undersigned counsel, respectfully requests a determination from the Federal Communications Commission ("Commission") that the Hearing Aid Compatibility Act, codified in the U.S. Code as 47 U.S.C. § 610, and Sections 20.19 and 68.4 of the Commission's Rules governing hearing aid-compatible mobile handsets and telephones (the "Hearing Aid Compatibility Rules") do not apply to its mobile computing line of devices.

Hand Held Products is a manufacturer of data collection devices including portable data terminals that integrate bar code scanning capabilities with a variety of wireless communication capabilities including, in some models, GSM. All of Hand Held's products are intended for industrial and commercial applications, such as warehousing, transportation, inventory, checkout and package delivery. Hand Held does not sell to, or even have a channel for selling to, general consumers.

Currently two devices manufactured by Hand Held Products have optionally available mobile telephone capabilities – the Dolphin 9500 and the Dolphin 7900. Hand Held Products intends to introduce a third such product, which would otherwise trigger the application of the Hearing Aid Compatibility Rules to the company's products.¹ The Hearing Aid Compatibility Rules were promulgated to ensure that hard of hearing individuals would have equal or equivalent access to the telecommunications equipment and services. For the reasons set forth below, Hand Held Products respectfully submits that the purpose of these rules would not be frustrated by the Commission's determination that the company's line of mobile computing devices fall outside the scope of these rules.

I. COMPANY BACKGROUND

Established in 1972 and ISO 9001 certified since 1996, Hand Held Products is a leading manufacturer of data collection and communication solutions designed specifically for mobile, in-premise, and transaction processing applications. The company's products include bar code readers, scanners, terminals, and magnetic stripe readers. With operations throughout the world, Hand Held Products is dedicated to solving business challenges based on a thorough understanding of each customer's unique requirements and goals.

¹ Under Section 20.19(e)(2), manufacturers of mobile telephones or mobile service providers that offer three digital wireless handset models, must make at least one compliant phone model in two years.

Hand Held Products' solutions have been renowned for their high performance and durability. Hand Held Products serves markets such as retail, transportation, parcel delivery, warehousing, manufacturing, government, and healthcare.

Hand Held Products also holds the distinction of being the world's leading provider of image-based data collection products - lead by its exclusive Adaptus™ Imaging Technology. Product solutions powered by Adaptus Imaging Technology offer the end user unsurpassed versatility and value by delivering performance well beyond basic bar code reading. With Adaptus Imaging Technology, customers can read virtually any type of bar code label or tag, capture digital images and signatures, read damaged codes, etc.

II. HAND HELD PRODUCTS DEVICES

Hand Held Products manufactures imaging, scanning, and data collection devices that perform the following functions: data capture, ID verification, image capture, and signature capture. These devices are employed by a variety commercial and government customers. Sample applications for these devices include: inventory management, delivery tracking, vending, logistics optimization, public safety, emergency medical response, fleet management, warehousing, and transportation logistics. Commercial customers include parcel delivery, retail, health care, and industrial concerns.

Hand Held Products produces a line of rugged mobile computers associated with the Trademark Dolphin®. The Dolphin line of mobile computers comprises several families of devices that provide real-time information access, data transmission, and containing additional telecommunications capabilities. Each mobile computer is customized to meet the business requirements and applications of Hand Held Products' specific customers. There are no "off the shelf" models. Two Dolphin series models, the 7900 and 9500, may be optionally equipped with a wireless WAN GSM/GPRS radio, capable of operation in the 850/1800/1900 MHz bands, and enabling real-time data and voice communications. The wireless radio features are currently supported by Cingular Wireless service, which the customer must procure independently; Hand Held Products does not provide the GSM service. The GSM capabilities are provided in addition to 802.11 wireless LAN capabilities.

At present, approximately 10% of Hand Held Products' customers use the GSM features available on the mobile computers. Of particular note, the sole customer of GSM enabled Dolphins that utilizes voice applications is German Railways, located in Germany. The largest installed base for GSM enabled Dolphins in the United States is FedEx Ground and currently only utilizes data

applications, but not voice applications. Currently, few if any U.S.-based customers use this feature.²

Due to the rugged nature of the device, the use cases to which these devices will be put, and the number of diverse technologies integrated by the devices, the form factor of each is quite large. The Dolphin 9500 GSM has dimensions of 9.6"L x 3.45"W max x 1.66"D max and can weigh up to 20.3oz. The 7900 is svelte in comparison at 19.2 oz. with dimensions of 7.3"L x 3.5"W max x 1.7"D max. Further technical specifications for these products are attached hereto as Exhibit 1.

The GSM enabled Dolphins are generally used in transportation environments. Typical applications include parcel delivery and route accounting. The GSM functionality is utilized in two manners: voice and data (utilizing GPRS). Based on extensive customer contact, Hand Held Products believes that data applications currently outnumber voice applications. One estimate is that less than 15% of all installed GSM enabled Dolphins currently utilize voice communication over the GSM link.

Data applications typically include transmission of relevant data to and from host systems, for example delivery confirmation. In these cases GSM/GPRS basically provides an extended data network to fill in the holes between 802.11 nodes. As there is no voice communication, it is believed that a user with a hearing

² At present, many U.S. customers have expressed a preference for their employees to have separate devices, dedicated to data and voice communication, respectively.

aid would not have any disadvantage with respect to a user with normal hearing capabilities.

Voice applications generally are provided to facilitate voice communications with a central operator/dispatcher, and are ancillary to the main functions of the mobile computers. Generally, the attractiveness of this function is to reduce the number of devices a company must install and service. The Dolphins are not designed to replace or replicate the functions of commonly available cell phones. There is nothing in the current voice communication functionality provided by the GSM functions in enabled Dolphins that could not be provided with a standard, and smaller, cell phone. Additionally, the mobile computers may be programmed in such a way as to limit the voice applications by restricting dialing to emergency and intra-corporate numbers. Hence, a customer can prevent its employees from using the mobile computer as a cell phone substitute. Furthermore, a customer can request Hand Held Products to seal the SIM cards physically in the mobile computers, preventing their use by employees as regular cell phones. In addition to the voice applications, the Dolphins are equipped with SMS text messaging capabilities for real time communication.

There are three modes of voice operation provided by the Dolphin: hands-free, headset, and handset. Hands-free mode turns the Dolphin into a speaker phone where incoming voice traffic is amplified enough that the phone need not be brought

to a users head for communication to take place. The headset mode employs a standard off-the-shelf mobile headset incorporating an ear piece and a microphone. The hand set mode lowers the speaker volume and reduces the microphone sensitivity to permit the user to hold the unit to his or her head much like a traditional phone. The size of the unit is such that usage in this manner is similar to putting a brick next to one's head.

Hand Held Products promotes the hands-free, or walkie-talkie mode as the preferable mode and believe that said mode is the most prevalent use case. In this mode, Hand Held Products believes that a user with a hearing aid would be at no greater disadvantage than a user with normal hearing capabilities.

III. A DETERMINATION BY THE COMMISSION THAT THE HEARING AID COMPATIBILITY RULES DO NOT APPLY TO THE COMPANY'S MOBILE COMPUTERS WOULD NOT FRUSTRATE THE INTENT OF EITHER THE HEARING AID COMPATIBILITY ACT OR THE COMMISSION'S RULES.

Congress passed the Hearing Aid Compatibility Act of 1998³ to ensure that the millions of Americans with some degree of hearing loss would have access to telecommunications equipment and services, by requiring the Commission to establish regulations and standards to prevent interference between telecommunications devices and hearing aid devices. In 2003, the Commission issued a report and order, updating its regulations in this area to include standards

³ See 47 U.S.C. § 610.

and requirements for digital wireless telephones.⁴ In the HAC Order, the Commission determined that digital wireless phone manufacturers and service providers should be required to implement certain changes to their products and services to make digital wireless phones accessible to individuals who use hearing aids or have cochlear implants.⁵

The emphasis of both the statute and the Commission's Rules has been to ensure that hard of hearing individuals, and hence, individual consumers would have the necessary access to telecommunications products and services.⁶ At the time of passage of the HAC Act, both Congress and the Commission recognized that wireless phones were primarily business tools.⁷ Hand Held Products' Dolphin mobile computing devices are business tools. They are not produced for the mass market, but rather for industrial, commercial, and government applications.

Grant of the company's request would have no adverse effect on hearing impaired individuals in the workplace. As explained above, Hand Held Products' mobile computing devices can be used to the same level of effectiveness by hard of hearing individuals in the workplace. Accordingly, even if the Commission grants the company's present request, its products still comply with section 255(b) of the

⁴ *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, FCC 03-168, Report and Order (rel. Aug. 14, 2003) ("HAC Order").

⁵ *Id.* at ¶ 2.

⁶ *See id.*; *see also* H.R. Rep. No. 100-674, at 7 (1988).

⁷ *Id.* at ¶ 9.

Telecommunications Act of 1996 which requires a manufacturer of telecommunications equipment or customer premises equipment to ensure that its equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.⁸

IV. COMPLIANCE WITH THE HEARING AID COMPATIBILITY ACT AND THE COMMISSION'S RULES WOULD INCREASE THE COMPANY'S COSTS TO SUCH AN EXTENT THAT ITS MOBILE COMPUTING DEVICES COULD NOT BE MARKETED SUCCESSFULLY.

Compliance with the Hearing Aid Compatibility Act and the HAC Rules would significantly increase the Hand Held Products' design, development, and manufacturing costs for its mobile computing devices. The company manufactures substantially fewer units than regular cell phone manufacturers, and therefore cannot take advantage of the same production economies of scale.

These increased development costs would add approximately \$150 to the retail price of each unit, effectively placing the company at a serious competitive disadvantage in the marketplace. Taking the Dolphin 9500 as an example, this would add between 6% and 9% of cost to the end user. As most sales are pursuant to a bidding process, this margin will affect Hand Held's ability to compete in their market. Accordingly, Hand Held Products may not be able to market its products

⁸ 47 U.S.C. § 255(b).

successfully and would lose substantial business and the confidence of its customers.

VI. CONCLUSION

A determination by the Commission that the Hearing Aid Compatibility Rules do not apply to its mobile computing devices would not have a negative impact on hard of hearing consumers. Such a determination would not frustrate the intent of the Hearing Aid Compatibility Act or the Commission's Rules. Furthermore, the cost of compliance with the Rules would severely hinder the company's ability to compete and prohibit successful marketing of these devices. Accordingly, Hand Held Products respectfully requests the Commission to determine that the Hearing Aid Compatibility Rules do not apply to its mobile computing devices which incorporate cellular telephony capability.

Ms. Marlene H. Dortch, Secretary
April 28, 2006
Page 11

Respectfully submitted,

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Ms. Marlene H. Dortch, Secretary
April 28, 2006
Page 12

EXHIBIT 1

DOLPHIN 7900 AND 9500 DATA SHEETS